

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 No. 1:09-cr-10243-MLW

4  
5 UNITED STATES OF AMERICA

6  
7 vs.

8  
9 RYAN HARRIS

10  
11 \*\*\*\*\*

12  
13 For Trial Before:  
14 Chief Judge Mark L. Wolf

15 ***Excerpt Transcript:*** Jury Charge

16  
17 United States District Court  
18 District of Massachusetts (Boston.)  
19 One Courthouse Way  
20 Boston, Massachusetts 02210  
21 February 29, 2012

22 \*\*\*\*\*

23 REPORTER: RICHARD H. ROMANOW, RPR  
24 Official Court Reporter  
25 United States District Court  
One Courthouse Way, Room 5200, Boston, MA 02210  
bulldog@richromanow.com

A P P E A R A N C E S

ADAM J. BOOKBINDER, ESQ.

United States Attorney's Office  
John Joseph Moakley Federal Courthouse  
One Courthouse Way, Suite 9200  
Boston, Massachusetts 02210  
(617) 748-3112  
E-mail: Adam.bookbinder@usdoj.gov

and

MONA SEDKY, ESQ.

U.S. Department of Justice  
601 D. Street, N.W.  
Washington, D.C. 20530  
(202) 353-4304  
Email: Mona.sedky@usdoj.gov  
For the United States of America

CHARLES P. MCGINTY, ESQ.

Federal Public Defender Office  
District of Massachusetts  
51 Sleeper Street, 5th Floor  
Boston, Massachusetts 02210  
(617) 223-8080  
E-mail: Charles\_mcginty@fd.org  
For the defendant

## P R O C E E D I N G S

**(Excerpt Begins)**

THE COURT: All right. Ladies and gentlemen, now I am going to give you your instructions. As I said, I'm going to give them to you in three parts. The first part would be instructions that would apply in any criminal case like this one. The second part will be specific to the wire fraud charges that you'll need to decide. And the third part will relate to the process of your deliberations.

With regard to the first part, the instructions that would apply in any criminal case. While the law permits me to comment on the evidence, I choose not to do that. As I told you at the beginning of the case, you should not interpret, or to be more precise, misinterpret anything that I've said and done in the course of the case or anything that I say to you now as an indication of what I think your verdict should be. That's entirely up to you.

You must decide whether the government has proven the defendant guilty beyond a reasonable doubt on each particular charge. You'll make that decision based on the evidence and the law as I instruct you. You have to know the law, and it's my duty to teach you the law.

I've discussed what I was going to instruct as

1 my thoughts have evolved with the lawyers in the course  
2 of the case, but if anything they've said about the law  
3 sounds different to you than what I'm saying now, you  
4 have to follow the law as I'm describing it now. And  
5 similarly, if anything I've said to you in my brief  
6 preliminary instructions at the beginning of the case  
7 sounds different to you than what I'm telling you about  
8 the law now, you must follow the law as I'm describing  
9 it to you today.

10 I've worked to try to develop an accurate,  
11 complete and balanced description of the law. You  
12 should not single out any one instruction or sentence,  
13 but consider each of the things I say to you in the  
14 context of the others.

15 You are required, by the oath that you've  
16 taken, to follow law whether you understand the reasons  
17 for it or agree with it. As I said, you took an oath.  
18 If the government doesn't prove every essential element  
19 beyond a reasonable doubt, you must find the defendant  
20 not guilty on a particular charge. If you find the  
21 government has proven every element of a charge beyond a  
22 reasonable doubt, you must find the defendant guilty on  
23 that charge. And I'm going to explain the elements of  
24 wire fraud to you.

25 You are required to decide whether the

1 defendant has been proven guilty beyond a reasonable  
2 doubt. You should understand, however, and remember  
3 that if the defendant is convicted, if he's found  
4 guilty, the issue of punishment is solely for the Court,  
5 for the judge. It would be improper for you, the jury,  
6 to consider or be influenced by what the possible  
7 punishment might be.

8           You've heard me say repeatedly that you must  
9 decide the case based on the law and the evidence and  
10 that means, among other things, that you must disregard  
11 any possible bias or prejudice or sympathy that you may  
12 have. Both the defendant and the public expect that you  
13 will carefully and impartially consider all the evidence  
14 in this case, follow the law as I describe it, and reach  
15 a just verdict regardless of consequences.

16           As I've told you before, there are certain  
17 fundamental principles that apply in every criminal case  
18 like this one. First among them is that the defendant,  
19 Mr. Harris, is presumed innocent. You'll have the  
20 indictment in the jury room. You must remember that  
21 that indictment is only an accusation, it's a way of  
22 informing the defendant of the charges against him and  
23 bringing him to court for this trial. It is not itself  
24 evidence or any proof that he's guilty of any charge.  
25 In order for you to find the defendant guilty of a

1 charge, the government must prove his guilt on that  
2 charge beyond a reasonable doubt.

3 The defendant has no obligation to prove his  
4 innocence, he has no obligation to present testimony, he  
5 has no obligation to testify himself. Where as here the  
6 defendant has chosen not to testify, you may not  
7 consider that as an indication that he is guilty. You  
8 should not discuss or consider that at all.

9 Now I've said repeatedly that the burden is on  
10 the government to prove beyond a reasonable doubt that  
11 the defendant is guilty of the charge raised against  
12 him. I'm now going to tell you what reasonable doubt  
13 means.

14 The burden of proof has nothing to do with who  
15 called the witness or offered documents into evidence,  
16 It has to do with the quality of the evidence. Proof  
17 beyond a reasonable doubt is a strict and heavy burden,  
18 but it does not mean that a defendant's guilt must be  
19 proved beyond all possible doubt. It does require that  
20 the evidence exclude any reasonable doubt concerning the  
21 defendant's guilt.

22 A reasonable doubt may arise not only from the  
23 evidence produced, but also from the lack of evidence  
24 produced by the government. Reasonable doubt exists  
25 when after weighing and considering all the evidence,

1 using reason and common sense, jurors cannot say that  
2 they have a settled conviction of the truth of the  
3 charge.

4 Of course a defendant is never to be convicted on  
5 suspicion or guesswork. If, for example, you view the  
6 evidence in the case as reasonably permitting either of  
7 two conclusions, one that the defendant is guilty as  
8 charged and the other that the defendant is not guilty,  
9 you will find the defendant not guilty. It is not  
10 sufficient for the government to establish a  
11 probability, though a strong one, that an element of the  
12 offense charged or a fact necessary to prove an offense  
13 charged is more likely to be true than not true. That  
14 is not enough to meet the burden of proof beyond a  
15 reasonable doubt. On the other hand, there are very few  
16 things in this world that we know with absolute  
17 certainty and in criminal cases the law does not require  
18 proof that overcomes every possible doubt.

19 So concluding my instructions on the burden then,  
20 I instruct you that what the government must do to meet  
21 its heavy burden is to establish the truth of each part  
22 of each offense charged by proof that convinces you and  
23 leaves you with no reasonable doubt and therefore  
24 satisfies you that you can, consistent with your oath as  
25 jurors, base your verdict upon it. If you find a

1 particular charge against the defendant has been proven  
2 beyond a reasonable doubt, you will return a verdict of  
3 guilty on that charge. If on the other hand you think  
4 there is a reasonable doubt about whether a defendant is  
5 guilty of a particular offense, you must give the  
6 defendant the benefit of the doubt and find the  
7 defendant not guilty of the offense.

8 Now I have said that you have to decide the  
9 facts based on the evidence. The evidence has come to  
10 you in three forms. As I predicted, in the form of  
11 testimony, in the form of exhibits that have been  
12 admitted into evidence and which you'll have in the jury  
13 room, and in the form of stipulated facts, facts that  
14 the parties agree are true and you may accept as true.  
15 As the jury you're the judges of the facts, you decide  
16 if the facts are proven, you decide what inferences to  
17 draw from those facts, you decide the credibility of the  
18 evidence that's been presented.

19 With regard to all of the evidence, you can  
20 accept -- with regard to each piece of evidence, you can  
21 -- or each witness's testimony, you can accept all of  
22 it, you can disbelieve it and reject all of it, or you  
23 can believe part of it and disbelieve another part of  
24 it. And once you decide what's true, you decide what  
25 weight to give to that evidence.



1           In considering the evidence, you may draw  
2     reasonable inferences from the facts proven. I told you  
3     before that you need to put aside any possible bias,  
4     sympathy or prejudice you may have, but you're not to  
5     put aside your common sense. You're expected to bring  
6     together your common sense and serve somewhat as the  
7     common sense of the community in this case.

8           Facts can be proven by both direct and  
9     circumstantial evidence. Direct evidence is the  
10    testimony of someone who asserts actual knowledge of the  
11    facts, someone who says "I was there, this is what I saw  
12    and this is what I heard." Circumstantial evidence is  
13    proof of events or circumstances on the basis of which  
14    you, based on your common experience, may infer the  
15    existence or nonexistence of a fact.

16          And looking out the window I think it's timely  
17    to remind you of the example I gave you at the beginning  
18    of the case to explain what circumstantial evidence is,  
19    and I'll elaborate it a bit. Because remember I told  
20    you that while circumstantial evidence may sound like  
21    some complicated legal concept, it's really something  
22    you do, reasoning by circumstantial evidence, every day.

23          So if you were to go to sleep tonight and the  
24    ground were green in front of your home and you woke up  
25    tomorrow morning and there was 6 inches of snow there,

1 you would infer that during the night while you were  
2 sleeping it snowed, although you didn't see it and  
3 nobody told you that. And if you looked out into the  
4 snow and saw there were footsteps leading to your front  
5 door, you would infer that during the night, while you  
6 were sleeping, after it snowed, somebody walked to your  
7 front door. And if the newspaper was at the end of the  
8 footsteps, you would infer that during the night, while  
9 you were sleeping, after it snowed, somebody delivered  
10 the newspaper. That's reasoning from circumstantial  
11 evidence.

12 Direct and circumstantial evidence have equal  
13 standing in the law, you decide what weight to give to  
14 each. No greater certainty is required of  
15 circumstantial evidence than of direct evidence. You  
16 should consider all of the evidence and give each item  
17 the weight you think it deserves.

18 Certain things are not evidence. Anything you  
19 saw or heard outside the railing there in this courtroom  
20 is not evidence and you should disregard it. If an  
21 answer was given to a question and I later said that it  
22 was inadmissible and directed you to disregard it, you  
23 should disregard the answer. If I allowed any evidence  
24 in for only a limited purpose, you should use it only  
25 for that limited purpose.

1           As I've told you several times, anything the  
2       lawyers say is not evidence. Their opening statements,  
3       their questions, their closing arguments is not evidence  
4       -- are not evidence. And if in these closings that we  
5       just heard the lawyer's memory of the evidence differs  
6       from yours, individually and collectively, then you  
7       should rely on your memory of the evidence rather than  
8       what the lawyers said.

9           In the course of the case, as in every trial  
10      there have been some objections, but actually not that  
11      many while you've been sitting there, and it's proper,  
12      as I told you, for a party to object. It provides me an  
13      opportunity to decide whether the information at issue  
14      is sufficient, relevant -- sufficiently relevant and  
15      reliable to come to your attention under the rules of  
16      evidence.

17           You shouldn't draw any inferences or  
18      conclusions from the objections or my rulings. If I  
19      sustain the objection, you should -- if I sustain the  
20      objection, you should disregard any answer that might  
21      have been given. If I overrule the objection, you  
22      should treat the answer like any other answer. And as I  
23      said, if I gave any limiting instruction, you should use  
24      the testimony only for that limited purpose.

25           I told you in my preliminary instructions that

1 when we got to this point, since you're going to have to  
2 judge the credibility, the believability of some  
3 evidence of the witnesses, I would give you sort of a  
4 common-sense checklist of things that you might want to  
5 think about in judging credibility or believability.

6 You should treat the testimony of a law  
7 enforcement officer like the testimony of anybody else  
8 and not assume that he's more likely or less likely to  
9 be telling the truth because he's employed in law  
10 enforcement.

11 With regard to all the witnesses, you may want  
12 to ask yourself did he or she seem honest? Is what the  
13 witness said reasonable? Did it make sense? Did the  
14 witness have a reason not to tell the truth? Did the  
15 witness have a personal interest in the outcome of the  
16 case? Did the witness have a relationship to either  
17 side of the case? Did the witness have a reason to be  
18 prejudiced against or hostile to any party? Will the  
19 witness be affected by the verdict? Did the witness  
20 seem to have a good memory? Did the witness have a good  
21 opportunity to observe what he or she testified to? Did  
22 the witness answer the questions directly or not? Did  
23 the witness's testimony differ from the testimony of  
24 other witnesses? Was that testimony supported or  
25 contradicted by other evidence in the case?

1           Inconsistencies between two witnesses, or  
2       several witnesses, and inconsistencies in two statements  
3       by the same witness may or may not bear on credibility.  
4       Sometimes they're just innocent differences in  
5       perception and memory. It's also possible that  
6       somebody's contriving or making up their testimony. So  
7       in judging any inconsistencies you may want to consider  
8       whether the witness had a motive to lie, did the  
9       inconsistency concern an important matter or an  
10      unimportant detail, did it seem to be an innocent error  
11      or an intentional lie?

12           You heard some testimony that witnesses made  
13      statements before trial. You can consider those  
14      statements made before trial in deciding whether to  
15      believe the trial testimony you heard from any witness.  
16      You can decide if the prior statement was inconsistent  
17      with the trial testimony, and if so, decide whether it  
18      affects the believability of the testimony you heard at  
19      trial. If the prior statement was under oath, you may  
20      consider it for the truth of the matter discussed  
21      previously under oath and for the credibility of the  
22      trial testimony and any evidence you heard or statements  
23      that the defendant made before the trial you may  
24      consider for the truth of what you find was said.

25           Now, you heard the testimony of some witnesses

1 who were given immunity by court order or by an  
2 agreement with the government. Those agreements in the  
3 court order provide that no testimony given by the  
4 witness will be used against him or her, directly or  
5 indirectly, except in a prosecution for perjury or if he  
6 or she testifies falsely.

7           You're instructed that the government's  
8 entitled to present the testimony of an immunized  
9 witness. Some people who are given immunity are  
10 entirely truthful when testifying. However, the  
11 testimony of such a witness should be examined by you  
12 with greater care than the testimony of an ordinary  
13 witness. You should scrutinize it closely because such  
14 a witness may have a motive to falsify by making up  
15 stories or exaggerating what others did because he or  
16 she wants to avoid getting prosecuted. As with all the  
17 evidence, in deciding whether some or all of the  
18 testimony of a witness with immunity was truthful, you  
19 should consider, among other things, whether it was  
20 contradicted or corroborated, supported, by other  
21 evidence in the case. As I said, you should scrutinize  
22 the testimony of an immunized witness with great care  
23 and rely on it with caution. If after doing so you find  
24 some or all of his testimony to be true, you should give  
25 it such weight as you believe it deserves.

1           You also heard some testimony that some of the  
2 witnesses met before or during the trial with the  
3 government lawyers. It's permissible for the  
4 government, and indeed any lawyer, to discuss testimony  
5 with a prospective witness. However, you can consider  
6 those meetings in evaluating the testimony you heard and  
7 deciding whether the witness was biased or influenced by  
8 discussions with the lawyers.

9           You also heard testimony from some witnesses  
10 who were allowed to give opinions and explain things not  
11 specific to this case, relevant, but not specific to  
12 this case, but based on a particular experience or  
13 expertise that they have. And they were allowed to give  
14 that evidence to help you, the jury, but not to replace  
15 your judgment. So with regard to the people who  
16 testified as experts, you should consider their training  
17 and experience, you should consider the reasons for the  
18 opinions or explanations they gave you and the facts on  
19 which the witness relied. If any of the facts on which  
20 the witness relied are not proven, you should disregard  
21 any opinion to the extent it's based on unproven facts.  
22 And with experts, like any witness, you can accept or  
23 reject opinions in whole or in part.

24           So that completes the first part of my  
25 instructions, those that apply in a criminal case. Now

1 I'm going to give you the instructions that apply to the  
2 particular charges in this case.

3 There are now eight charges of wire fraud for  
4 you to decide. You're not being asked to decide whether  
5 the government has proven Count 1, the conspiracy charge  
6 that was read to you at the beginning of the trial and  
7 that charge has been removed from the indictment with a  
8 superseding indictment that you'll have in the jury  
9 room. Now it's shorter.

10 As I've told you, the indictment is only an  
11 accusation, it's not evidence or proof that a defendant  
12 is guilty of any or all of the wire charges. The  
13 defendant has pled not guilty, therefore the government  
14 must prove he's guilty beyond a reasonable doubt to  
15 achieve his conviction on a particular charge.

16 Each count alleges a separate crime and you  
17 should decide and consider each count separately and  
18 return a separate verdict for each. Unless I gave you a  
19 limiting instruction in the course of the trial, you may  
20 consider all of the evidence in deciding each count.  
21 And if I did give you a limiting instruction, you have  
22 to follow it. As to each separate charge you must  
23 determine whether the government has proven the  
24 defendant guilty beyond a reasonable doubt.

25 Evidence provided by or concerning other people



1 may be considered by you. However, the fact that  
2 another person pled guilty to committing some other  
3 crime himself is not evidence or proof that Mr. Harris  
4 is guilty of any of the wire fraud charges in this  
5 case. Your verdict should be based solely on the  
6 evidence or lack of evidence concerning Mr. Harris, and  
7 in accordance with my instructions, and without regard  
8 to the guilty pleas of others. So that means you can  
9 consider the testimony of others, but the fact, as I  
10 said, that some of the witnesses pled guilty to  
11 something, is not itself, the guilty pleas themselves  
12 are not evidence that Mr. Harris is guilty of the  
13 charges in this case.

14           Depending on your view of the evidence, you may  
15 find Mr. Harris not guilty on all eight charges, you may  
16 find him guilty on some of the charges and not on other  
17 charges, or you may find him guilty on all of the  
18 charges. That depends on your view of the evidence.

19           You'll see the indictment charges that certain  
20 alleged crimes were committed on or about certain  
21 dates. Although it's not necessary for the government  
22 to prove beyond a reasonable doubt that the crimes were  
23 committed on a particular day, it does have to prove  
24 that the crime was committed at a time reasonably near  
25 the dates alleged in the indictment.

1           Now, as I've said, each of the remaining counts  
2 charges Mr. Harris with committing wire fraud. And so  
3 the charging language begins in Paragraph 2, which is on  
4 the first page of the indictment you'll have in the jury  
5 room, and it says: "On or about the dates set forth  
6 below, in the District of Massachusetts and elsewhere,  
7 Ryan Harris, having knowingly devised a scheme to  
8 defraud and to obtain money and property by means of  
9 false" -- I'm sorry, "by means of material false and  
10 fraudulent pretenses, representations and promises,  
11 transmitted and caused to be transmitted in interstate  
12 commerce wire communications, including writings,  
13 signals and sounds, for the purpose of executing the  
14 scheme to defraud and aided and abetted others in doing  
15 so as set forth below."

16           So then Count 1 charges that in approximately  
17 2005, Nathan Harris accessed the Internet from  
18 Massachusetts and downloaded Harris's Sigma cable modem  
19 hacking product. Essentially it's alleged that was in  
20 furtherance of the alleged scheme to defraud.

21           Count 2 charges that in about 2007 Hanshaw --  
22 another wire fraud was committed for which Mr. Harris is  
23 allegedly responsible because Hanshaw, it's charged,  
24 accessed the Internet from Massachusetts and downloaded  
25 Harris's Sigma X cable modem hacking product.

1           Count 3 charges that on or about January 15th,  
2           2007, in furtherance of the scheme Hanshaw accessed the  
3           Internet from Massachusetts using Harris's products and  
4           a cloned MAC address and participated in an on-line chat  
5           discussing his hacking activities.

6           Count 4 charges that on December 5, 2007, or  
7           about December 5th, 2007, Hanshaw accessed the Internet  
8           from Massachusetts using Harris's products and cloned a  
9           MAC address and participated in an on-line chat  
10          discussing his hacking activities.

11          Count 5 charges that on or about June of 2008,  
12          Mr. Larosa, Jose Larosa, accessed Harris's TCNISO  
13          website from Massachusetts and bought a modified cable  
14          modem and ancillary products in furtherance of the  
15          scheme.

16          Count 6 charges that on or about July of 2008,  
17          Larosa accessed the Internet from Massachusetts using  
18          Harris's products and a cloned MAC address and obtained  
19          free Internet access.

20          Count 7 charges that William Madeira accessed,  
21          on about June of 2009, Harris's TCNISO website from  
22          Massachusetts and bought a modified cable modem and  
23          ancillary products.

24          And Count 8 charges that in furtherance of the  
25          scheme, about July of 2009, Madeira accessed the

1 Internet from Massachusetts using Harris's products and  
2 a cloned MAC address and obtained free Internet access.

3 For present purposes you don't have to try to  
4 memorize all of that. You're going to have it in the  
5 jury room with you.

6 So all of the charges are charges of wire  
7 fraud. Now I'm going to tell you what the government  
8 has to prove, beyond a reasonable doubt, to prove a wire  
9 fraud charge.

10 To prove -- and I'm going to read this to you  
11 and part of the reason I'm going to read it to you is  
12 you may come back and ask me to tell you again and it's  
13 important that I be able to tell you the same thing, if  
14 you do that, so. It's not all that long. But anyway.

15 To prove that the defendant committed a wire  
16 fraud charge in this case the government must prove the  
17 following things beyond a reasonable doubt. First,  
18 there was a scheme substantially as charged in the  
19 indictment to defraud or obtain something of value from  
20 internet service providers by means of false or  
21 fraudulent pretenses. Second, that the defendant  
22 knowingly and willfully participated in the scheme with  
23 an intent to defraud. And third, on or about the dates  
24 alleged, the defendant transmitted or caused to be  
25 transmitted an interstate wire communication for the

1       purpose of furthering the scheme.

2               If the government fails to prove any of these  
3       elements beyond a reasonable doubt, you must find the  
4       defendant not guilty on the count you are considering.  
5       If the government proves all of these elements beyond a  
6       reasonable doubt with regard to a particular count, you  
7       must find the defendant guilty of that charge.

8               As I said, the first thing that the government  
9       must prove beyond a reasonable doubt is that the  
10      defendant participated in a scheme to defraud that  
11      involved material false or fraudulent pretenses. A  
12      scheme is a plan or a course of conduct. The term  
13      "defraud" means to deprive somebody of something of  
14      value by means of deception or cheating. A scheme to  
15      defraud ordinarily includes a desire to bring about some  
16      gain or benefit for oneself or some other person or a  
17      desire to cause some loss to somebody else. The term  
18      "false or fraudulent pretenses" means any intentional  
19      material false representation or omission, including  
20      material direct false representations and the deliberate  
21      concealment of material facts. A fact is material if it  
22      has a natural tendency to influence or is capable of  
23      influencing whoever or whatever is making a particular  
24      decision.

25              In essence, in this case the government must,

1 among other things, prove beyond a reasonable doubt the  
2 existence of a scheme to deprive internet service  
3 providers of payment for internet service based on  
4 intentional material false representations or omissions  
5 relating to a particular device concerning whether that  
6 device was authorized to receive such service. While  
7 the government must prove that the scheme alleged in the  
8 indictment existed, it does not have to prove that it  
9 succeeded.

10 The next thing that the government must prove  
11 beyond a reasonable doubt is that the defendant  
12 participated in the alleged scheme knowingly and  
13 willfully and with intent to defraud. The government  
14 does not have to prove that the defendant originated the  
15 alleged scheme, it only has to prove that he  
16 participated in it with the required knowledge and  
17 intent to defraud. To act knowingly means to act  
18 intentionally and not by accident or mistake. To act  
19 willfully means to intentionally do something known to  
20 be unlawful. An intent to defraud means to act  
21 knowingly and with specific intent to deceive and for  
22 the purpose of causing some financial loss or to obtain  
23 money for the defendant or someone else or for both of  
24 these purposes.

25 It would not be enough to prove wire fraud for

1 the government to prove only that Harris sold one or  
2 more products that he knew would be used to commit a  
3 crime. However, the nature of any product sold and any  
4 knowledge that Harris had as to how it would be used are  
5 evidence that you can consider, along with all the other  
6 evidence, in deciding whether the government has proven  
7 any or all of the wire fraud charges in this case.

8 Now, it may be hard to get into somebody's  
9 head, so intent or knowledge need not be proven by  
10 direct evidence. Rather circumstantial evidence, as  
11 well as direct evidence, may be important in determining  
12 the defendant's state of mind. In determining what the  
13 defendant knew or intended at a particular time you may  
14 consider any statements made or anything done or not  
15 done by the defendant and all the other facts and  
16 circumstances proven by the evidence.

17 You may infer, but you certainly are not  
18 required to infer, that a person intends the natural and  
19 probable consequences of acts knowingly done or  
20 deliberately not done. It's entirely up to you,  
21 however, to decide what facts were proven by the direct  
22 and circumstantial evidence.

23 The last thing that the government must prove  
24 beyond a reasonable doubt is that on or about the date  
25 alleged in the indictment, for the count you are

1 considering, the defendant transmitted or caused to be  
2 transmitted an interstate wire communication in  
3 furtherance of the alleged scheme. The use of the  
4 internet to send a message, such as an e-mail or a  
5 communication to a website, may be a wire  
6 communication.

7 An interstate wire communication is a wire  
8 communication from one state to another. The wire  
9 communication does not have to be essential to the  
10 scheme or itself be fraudulent. However, it must be  
11 made as part of an attempt to execute the scheme or  
12 accomplish one of its goals. To prove that the  
13 defendant caused a particular interstate wire  
14 communication to occur, the government does not have to  
15 prove that he sent the wire communication himself. It  
16 would be sufficient if the government proved beyond a  
17 reasonable doubt that he knew that the use of interstate  
18 wires would follow in the course of the scheme or that  
19 it was reasonably foreseeable that the interstate wires  
20 would be used as a result of his actions. It is the use  
21 of the interstate wires generally rather than the  
22 specific wire transmission that is charged that must be  
23 proved to have been reasonably foreseeable as a result  
24 of the scheme.

25 Therefore, if it is proven that Harris



1 participated in the alleged scheme and did something  
2 relating to it which he knew or should have reasonably  
3 foreseen would result in interstate wire transmissions  
4 being used in an effort to execute the scheme or  
5 accomplish one of its goals, you may find the use of the  
6 interstate wire communication element to be proved.

7 As I said earlier, if you find that the  
8 government has proven beyond a reasonable doubt every  
9 essential element of wire fraud concerning the  
10 particular count you're considering, you shall find the  
11 defendant guilty on that count. If the government has  
12 failed to meet that burden, you shall find the defendant  
13 not guilty on that count. As I also said earlier,  
14 depending on your view of the evidence, you may find the  
15 defendant not guilty on all counts, guilty on some but  
16 not all counts, or guilty on all counts.

17 Now I'm going to move to the third part of  
18 these instructions which relate to your deliberations.

19 When we finish -- when I finish these  
20 instructions, relatively soon, you'll go back to the  
21 jury room, and I hope they'll be enough time for this,  
22 but the first thing you should do is choose a  
23 foreperson, somebody to moderate your discussions and  
24 communicate with me on your behalf.

25 Then, either today or tomorrow, we're going to

1 be guided by your preferences from now on, you should  
2 engage in rational discussion by all jurors for the  
3 purpose of reaching a unanimous verdict. Every juror  
4 should decide the case for himself or herself in the  
5 context of the evidence and the law giving proper  
6 consideration to the views of your fellow jurors. You  
7 should reconsider your initial views and change them if  
8 you're persuaded that they're not right, but you  
9 shouldn't abandon your views solely for the sake of  
10 reaching a unanimous verdict.

11 You should discuss the case only when you're  
12 all together so everybody gets the benefit of everybody  
13 else's view. And your verdict must be unanimous on each  
14 count. You're going to have a very simple verdict form  
15 that says: "We the jury find the defendant, Ryan  
16 Harris, blank on Count 1, blank on Count 2." And when  
17 all twelve of you agree, the foreperson will write what  
18 you agree, guilty or not guilty on Count 1, for each of  
19 the eight Counts.

20 If you need to communicate with me, the  
21 foreperson should write a question or a communication  
22 and sign it, but at no time, until you have a unanimous  
23 verdict, should you send me any note that indicates what  
24 you've already decided or how you're divided on  
25 anything. We're not entitled to know that until you've

1 reached unanimous verdicts on all counts.

2 All right. May I see counsel at sidebar,  
3 please.

4 (**Excerpt Ends**)

5  
6 C E R T I F I C A T E

7  
8 I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER,  
9 do hereby certify that the forgoing transcript of the  
10 record, of the aforementioned **excerpt**, is a true and  
11 accurate transcription of my stenographic notes before  
12 Chief Judge Mark L. Wolf, on February 29, 2012, to the  
13 best of my skill and ability.

14  
15 /s/ Richard H. Romanow 03-06-12

16 \_\_\_\_\_  
17 RICHARD H. ROMANOW Date  
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